

**TRUE RELIGION**



**TRUE RELIGION BRAND JEANS STATEMENT FOR THE RECORD  
ON CHINA'S TRADE AND INDUSTRIAL POLICIES**

**Before the  
Committee on Ways and Means  
of the  
United States House of Representatives**

**June 16, 2010**

**TRUE RELIGION**



**TESTIMONY OF TRUE RELIGION BRAND JEAN**  
**ON CHINA'S TRADE AND INDUSTRIAL POLICIES**

True Religion Brand Jeans (“*True Religion*”) applauds the efforts of the House Committee on Ways and Means to examine the trade and investment relationship between the United States and the People’s Republic of China (“*China*”). Despite a vast and growing economy with many opportunities for foreign investment, recent initiatives have highlighted the Chinese Government’s increasingly protectionist interference with the market economy. China’s policies distort trade flows and disadvantage foreign companies. The United States Government must encourage China to actively follow market economy principles with respect to U.S. corporations, as well as provide guidance and resources to U.S. businesses operating in China. Failure to do so has damaged U.S. companies’ and workers’ ability to compete at home and abroad.

True Religion has grave concerns about China’s ongoing failure to adequately protect the intellectual property of U.S. companies. There is no doubt that intellectual property rights infringement is rampant in China. Despite a well developed system of laws, enforcement continues to be sporadic and inconsistent, and Chinese policies unfairly disadvantage U.S. intellectual property right holders. True Religion in particular has experienced the paradox of Chinese intellectual property rights enforcement.

To date, the Chinese Government has refused to grant trademark registrations for True Religion on religious grounds. Furthermore, Chinese authorities have refused to take action against counterfeiters of True Religion branded products in China. Without a registered Chinese trademark, True Religion’s trademark infringement claims are unenforceable under the laws of China. In fact, a court in Shanghai recently held that a manufacturer that exported counterfeit goods entirely outside of China could not be held liable for counterfeiting because no Chinese consumers could be harmed by the manufacturer’s act. It is clear that China does not respect the intellectual property rights of foreign companies. True Religion therefore seeks the support of the Committee on Ways and Means to rectify this problem through direct and immediate engagement with the Chinese Government.

**True Religion Brand Jeans**

True Religion is a U.S.-based premium clothing line with its headquarters located in the greater Los Angeles area. All of True Religion’s American-made adult denim products are manufactured in Los Angeles. Furthermore, True Religion sources much of its raw materials from the United States. True Religion maintains several other manufacturing operations in Los Angeles for its t-shirts and fleece products. Additional

licensed product categories such as footwear, headwear, scarves, gloves, swimwear, hosiery, fragrance and eyewear are also made predominantly in the U.S. True Religion has more than 80 company-owned stores across the United States and also sells domestically to other major department and specialty stores. In addition, True Religion currently operates several company-owned and franchise stores around the world, sells to numerous international retailers and has robust international expansion plans.

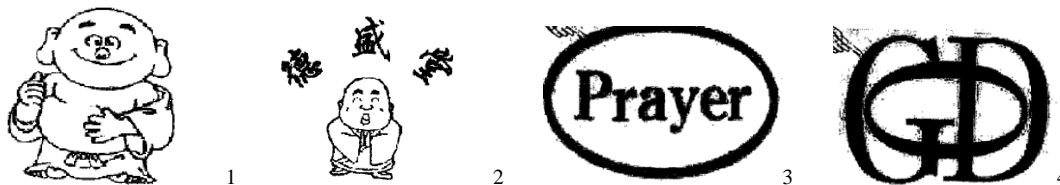
### **Chinese Trademark Applications**

True Religion first applied in 2005 for a Class 25 trademark in China. The initial filing by True Religion was for defensive purposes. Even in 2005, counterfeit True Religion products were being exported from China to the U.S. Subsequently, True Religion filed several additional trademark applications in China, expanding its coverage for apparel products and adding coverage for other product categories, such as fragrance, eyewear, and leather goods. True Religion continues to seek Chinese trademark registrations in order to protect its brand from Chinese counterfeiting and misappropriation. In addition, True Religion anticipated that certain apparel products and other licensed products might be manufactured in China. Under the laws of China, trademark registration is required for efficient and effective enforcement of a company's intellectual property rights.

To date, all of True Religion's applications have been denied. Chinese authorities have denied trademark protection based solely on Article 10(8) of the Chinese Trademark Law, which states that trademark protection cannot be granted to marks that are "detrimental to socialist morality or customs." The relevant authorities' explanations have ranged from the suggestion that the smiling Buddha image would offend Buddhists because it is an anathema to the "seriousness" of the religion, to the implication that the design coupled with the words "True Religion" suggests that Buddhism is the one "true belief," which would offend people of other faiths.

Until recently, all of the marks that have been rejected contain the smiling Buddha design shown at the beginning of this statement, with and without the words "True Religion." However, Chinese authorities have subsequently rejected two applications for marks containing only the words "True Religion" and "True Religion Brand Jeans," even though the image of the smiling Buddha was not included. Again, China cited Article 10(8), but this time it provided no explanation other than stating that the words "True Religion" can be translated into Chinese as "true belief," which is "likely to hurt religious feeling and produce unhealthy social influence when used and registered as a trademark."

The decisions of the Chinese authorities are troubling. No previous rejections suggested that the words "True Religion" by themselves were problematic. Furthermore, China continues to grant trademark protection to Chinese applicants with similar marks that contain images of Buddhist monks and religion-related words, including a recent trademark for the words "true belief" in Chinese.



## Effect of Denial

True Religion has exhausted the appeals of the rejection of its True Religion with Device and Device only trademark applications. The rejection of True Religion's trademark applications for word marks is currently under review by China's Trademark Review and Adjudication Board (TRAB). While True Religion has continued to challenge the denial of trademark applications in appellate proceedings and has filed new applications for word marks, counterfeit products pour out of China at an alarming rate. Encouraged by True Religion's growing global success, counterfeit jeans, t-shirts, hoodies, knit pants, handbags and other products are sold throughout China<sup>5</sup> as well as exported to key True Religion markets, including, but not limited to, the Republic of Korea, Japan, Taiwan, Thailand, Germany, United Kingdom, Belgium, Brazil, Canada, and the United States. The counterfeit trade thrives due to the immense profitability to the counterfeiters. In 2009, True Religion estimates that approximately 434,000 units of Chinese-made counterfeit products were seized or recovered due to the extensive worldwide enforcement programs managed by True Religion. However, the enforcement costs borne by True Religion are steep and the quantities recovered represent only a small percentage of the counterfeit products being exported from China.

True Religion has undertaken aggressive action to stem the flow of counterfeiting. True Religion works closely with U.S. Customs and Border Patrol, domestic and international investigators, law enforcement agencies and Customs offices to help identify and stop the flow of counterfeit products. This effort, however, is futile if True Religion is barred from addressing the problem at its source. Without a registered Chinese trademark, True Religion is effectively unable to prevent counterfeiting in China.

For instance, the Chinese Government will not conduct raids at wholesale markets or retailers without a registered Chinese trademark as proof of intellectual property rights. Similarly, the Chinese customs service will not take action against counterfeit exports unless the mark at issue is registered in China and recorded with PRC Customs. In short, the Chinese Government has put True Religion in a "Catch-22" in that China will not

<sup>1</sup> Registered to Beijing Jinliufu Spirits Co. Ltd, for "meats, etc."

<sup>2</sup> Registered to Fang Xiuping, for "incense, etc."

<sup>3</sup> Registered to Kunshan Puruier Coating and Textile Co., Ltd., for "rubber-coated fabric, etc."

<sup>4</sup> Registered to Shandong Gaode Consultancy Co., Ltd., for "business management consultancy, etc."

<sup>5</sup> China's finding that "True Religion" marks are against "socialist morality" apparently do not apply to "True Religion" counterfeit products.

take action against counterfeits unless True Religion first registers its marks, and yet China is refusing to register True Religion's marks.

### **Impact on American Business**

True Religion is an American success story. Started in 2002 with the intention of making quality, timeless, authentic American denim products, it has shown a commitment to sourcing materials and manufacturing domestically. It is one of the few American apparel manufacturers that is still predominately based in the United States and is the source of 3,500 California jobs.

The financial and reputational harm to True Religion due to Chinese counterfeits is difficult to quantify. Not only is the company required to expend considerable resources to remove counterfeit products from the stream of commerce on a worldwide basis, but there are immeasurable lost sales as well. Further, inferior counterfeit products damage the company's reputation for quality and denigrate the True Religion brand. Counterfeit products seriously and negatively impact True Religion's ability to compete globally. As a small company beginning its expansion overseas, True Religion lacks the resources to truly engage the Chinese government on this issue or to police the entire world for Chinese-made counterfeits. Therefore, the ability to enforce its rights on the ground in China is essential to effectively address this problem.

As True Religion's case illustrates, small to medium sized American enterprises are disproportionately impacted by China's unpredictable regulatory environment. They generally lack the resources to lobby the Chinese government to comply with its own intellectual property rights laws. Furthermore, they may be unable to identify Chinese counterfeiters or navigate Chinese enforcement mechanisms. Smaller U.S. entities must also be aware of narrowing market access due to a discriminatory and protectionist regulatory environment which favors Chinese enterprises. Faced with outright and potentially systemic discrimination in China, a generation of growing American firms face severe disadvantages not only in the Chinese market, but globally and domestically.

### **True Religion's Continuing Efforts**

With the understanding that China should not be allowed to deny the registration of a trademark while at the same time use the absence of a registration as the basis for permitting wholesale counterfeiting of products bearing that mark for sale in China and abroad, True Religion has availed itself of every available resource to address this problem. Seeking to reverse or soften the Chinese authorities' stance on the True Religion trademark, True Religion has asked the U.S. Administration to raise these concerns with the Chinese Government immediately.

While many of the older decisions (involving marks with the smiling Buddha image) are harder to overturn because most of them have been appealed numerous times and are currently making their way through the Chinese court system, the two newest marks – which are just word marks that contain the words “True Religion”— have only been rejected in the first instance. These marks are currently under administrative review

before the Trademark Review and Adjudication Board of the Chinese State Administration for Industry and Commerce.

## **Conclusion**

True Religion is pleased that the Committee on Ways and Means has recognized American businesses' growing concern regarding China's economic, industrial and intellectual property policies. U.S. companies must not be left to compete with one hand tied behind their back. As illustrated by True Religion's experience, China's nationalist economic policies not only reduce market access and protect Chinese business, but, through the appropriation of intellectual property, hurt American companies in the U.S. market. The U.S. Government must engage China on these issues, as well as devote resources and attention to preparing the private sector to engage with China under its protectionist regulatory regime. True Religion stands ready to assist the Committee in its consideration of this important issue.